IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.426 OF 2007

1. Shri Subhash Hemaya Kalal
and ors. .. Petitioners.

Vs

1. The Chief Officer,
Curchorem Cacora Municipal
Council... and ors. .. Respondents

Mrs. A.Agni, Advocate for the petitioners.

Mr Nitin Sardessai with Mr N.K.Sawaikar, Advocate for respondent no.1.

Mr S.S.Kantak, Advocate General with Mr M.Salkar, Addl. Govt. Advocate for respondent nos 2 and 3.

CORAM : D.B.BHOSALE & N.A.BRITTO, JJ.

DATE : 4TH DECEMBER, 2007.

P.C:

1. Heard Mrs Agni, learned counsel for the petitioners, Mr.Sardessai, learned counsel for respondent no.1 and Mr Kantak,

learned Advocate General for respondent nos 2 and 3 for quite some time.

2. By this writ petition, the petitioners have prayed for allotment of shops/spaces in the new market complex. The claim of the petitioners is based on the order passed by this Court in Writ Petition No.148 of 1997, decided on 4.6.1997 (**Pedestrians, Dattatraya Deshpande Road, Vs The Chief Officer, Municipal Council of Mormugao and Ors – 1997 (2) Goa L.T.128),** so also the order in terms of the Minutes of Order dated 6.4.2000 in Writ Petition No.374/1999 and 375/1999. According to the petitioners, they were offered temporary rehabilitation pursuant to the Minutes of Order filed in those two writ petitions and they were allotted spaces in the temporary rehabilitation scheme and were to be allotted shop/spaces in the new market complex at Curchorem. Petitioner nos 1 to 3 are vegetable vendors and the remaining petitioners had their kiosks.

3. There is no dispute that the claim of the petitioners is based on the direction no.6 issued by this Court in the Pedestrians case (supra). The relevant direction no.(6) in paragraph 9 of the judgment reads thus :

> "In respect of existing duly licensed structures which comply with the terms of the license, the Municipal Councils to take a policy decision and frame guidelines

> for their continuance/re-location on areas earmarked for hawking but not to inconvenience the pedestrians."

4. On the basis of the material placed on record, the petitioners claim that they were having licensed structures and, therefore, they are entitled for rehabilitation and allotment of shop/spaces in the new market complex at Curchorem.

5. Ms.Agni, learned counsel for the petitioners, at the outset, invited our attention to the Minutes of Order in Writ Petition No.374 of 1999 and the order passed in terms of the Minutes of Order dated 6.4.2000. Paragraphs 13 and 14 of the Minutes of Order to which our attention was invited in particular, read thus:

> "13. Each allottee shall given an undertaking in respect of the conditions herein to the Hon.High Court prior to the occupation of the plots.
>
> 14. The allottee hereby undertakes to vacate the space allotted to him in temporary rehabilitation scheme within fifteen days from the date of notice issued after allotment of plot/shop/gada under permanent rehabilitation scheme proposed by the Municipal Council.. The possession of the plot allotted shall be handed over to the allottee by 17th April, 2000."

6. Admittedly, all the six petitioners were parties either in writ petition nos.374 of 1999 or 375 of 1999, wherein similar directions

were issued. In terms of paragraphs 13 and 14 of the Minutes of Order, Ms Agni, learned counsel for the petitioners, submitted that, their right of allotment of shop/space under permanent rehabilitation scheme proposed by the Municipal Council was recognized. Then, our attention was invited to an undertaking given by the petitioners in terms of paragraph 13 of the Minutes of the Order, to the effect that they shall vacate the space allotted to him/her under temporary rehabilitation scheme within 15 days from the date of notice issued after allotment of shop/space under permanent rehabilitation scheme proposed by the Municipal Council. Our attention was also drawn to the order passed by the Division Bench in three writ petitions bearing nos 432/03, 573/03 and 626/03, which were disposed of by an order dated 17.3.2004. By that order, the petitioners were given liberty to approach this court if they were not included in the permanent rehabilitation scheme and in view of this order, according to Ms Agni, the petitioners have approached by way of the instant writ petition since they were excluded in the permanent rehabilitation scheme. Ms.Agni also invited our attention to several documents annexed to the petition to contend that every petitioner in his/her own right, is entitled for allotment of shop/space under permanent rehabilitation scheme. Every petitioner, independent of other

members in his family, was doing business prior to 1997 and, therefore, they are independently entitled for allotment of space/shop in permanent rehabilitation scheme proposed by the Municipal Council. Ms Agni, for instance, invited our attention to the documents of petitioner no.4 and contended that as to how she is entitled for rehabilitation, independent of other members in her family. This submission was made in reply to the statement made in the reply affidavit that one of the members of every petitioners family was allotted shop/space under the rehabilitation scheme.

7. On the other hand, Mr.Sardessai, learned counsel for the respondents, submitted that the petitioners have not produced on record a single document to show that they were having licensed structures at the relevant time. He submitted that none of the documents produced on record help the petitioners to establish, even if it is assumed that they were having independent business, that they were having licensed structures as indicated in paragraph 6 of the order in the Pedestrians case. He invited our attention to the reply and more particularly paragraph 8(i) to 9(A) of the reply to contend that every member of the petitioners' family, who was having licensed structure at the relevant time, was allotted shop/space. Insofar as petitioner no.4 is concerned, he submitted that her husband

Ganesh Raya Naik was holding shop no.4 and was having license for the said shop and in view thereof his son Raya Naik has been allotted shop no.A-10 in the market complex and, therefore, petitioner no.4 is not entitled for allotment of shop/space in the market complex. He submitted, similar is the case of other petitioners also.

8. We perused the petition and annextures thereto, so also the reply affidavits and its annextures. We heard learned counsel for the parties for quite some time and with their assistance went through the entire record placed before us. It is pertinent to note that the learned counsel for the petitioners could not and did not show us a single document supporting the case of the petitioner/s that he/she was having licensed structures prior to the judgment of this Court in the Pedestrian's case. Our attention was invited to a document at page 30. This is a receipt dated 19.7.1994 issued by the Municipal Council in favour of Ganesh R. Naik towards rent upto July,1994 in respect of shop no.4 and then to a receipt dated 19.11.93 at page 235 issued by the Municipal Council from Raya Ganesh Naik of Rs.25/- on account of some NOC. These two receipts were relied upon by the petitioners to contend that Ganesh and Raya were having independent business prior to the judgment in the Pedestrians case. On bare perusal of the receipts it is clear that the first receipt at page

30 was issued in favour of Ganesh of Rs.600/- as rent of shop no.4 whereas receipt at page no.235 was of Rs.25/- issued for some NOC. The receipt in favour of Raya Ganesh Naik does not indicate at all that he was independently holding a licensed structure at the relevant time. When we specially asked learned counsel for the petitioners as to whether she can produce a receipt similar to the receipt at page no.30 in favour of Raya s/o Ganesh Naik, she expressed her inability and kept on inviting our attention to other documents. Thereafter, our attention was also invited to a document at page 35 dated 6.7.1992 in support of the claim of petitioner no.5. It is pertinent to note that the said certificate was not issued by the Chief Officer of the Municipal Council but it was issued by the President. This document, in our opinion, would not help petitioner no.5 to establish that she was holding a licensed structure at the relevant time. In reply affidavit in paragraph 9A(iv), it has been clearly stated that petitioner no.5's husband has been allotted shop no. A-14. Similar is the case of other petitioners also. Running an independent business was not a criterion for allotting shop/space in the market complex.
The direction issued in the Pedestrian's case is very clear that the then existing hawkers having licensed structures were only entitled

for rehabilitation. We are satisfied that none of the petitioners falls in that category and they have rightly been denied allotment in the market complex. In the circumstances, this petition is dismissed. Interim relief, if any, stands vacated.

(D.B.BHOSALE, J.)

(N.A.BRITTO, J.)